

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LARRY WILLIAMS,)	No. C 04-04758 JW (PR)
Petitioner,)	
vs.)	ORDER TO SHOW CAUSE
J. BROWN, Warden,)	
Respondent.)	

Petitioner, a state prisoner incarcerated at the California State Prison - San Quentin, has filed a pro se petition for a writ of habeas corpus under 28 U.S.C. § 2254, challenging the California Board of Prison Terms' ("BPT") August 25, 2003 decision to deny him parole. Petitioner has paid the filing fee.

BACKGROUND

According to the petition, petitioner was convicted by a jury in the Superior Court of the State of California in and for the County of San Mateo of first degree murder (Cal. Penal Code § 187), robbery (Cal. Penal Code § 211), and use of a firearm (Cal. Penal Code § 12022.5). Petitioner was sentenced to 25 years to life in

1 state prison with a minimum eligible parole date of February 15, 2004. (Pet. at 1.)

2 On August 25, 2003, petitioner appeared before the BPT for an initial
3 parole hearing. The BPT denied parole for a period of three years. Petitioner
4 challenged the BPT's decision in the state courts, and on October 13, 2004, the
5 Supreme Court of California denied review.

6 7 **DISCUSSION**

8 **A. Standard of Review**

9 This court may entertain a petition for a writ of habeas corpus "in behalf of a
10 person in custody pursuant to the judgment of a State court only on the ground that
11 he is in custody in violation of the Constitution or laws or treaties of the United
12 States." 28 U.S.C. § 2254(a).

13 It shall "award the writ or issue an order directing the respondent to show
14 cause why the writ should not be granted, unless it appears from the application that
15 the applicant or person detained is not entitled thereto." Id. § 2243.

16 **B. Legal Claims**

17 Petitioner seeks federal habeas corpus relief from the BPT's August 25, 2003
18 decision finding him not suitable for parole on two grounds: 1) the BPT is violating
19 due process by failing to properly administer Penal Code § 3041, and 2) the BPT's
20 mischaracterization of his crime in their decision to deny parole violates due
21 process. Liberally construed, petitioner's claims appear cognizable under § 2254
22 and merit an answer from respondent.

23 24 **CONCLUSION**

25 For the foregoing reasons and for good cause shown,

26 1. The clerk shall serve by certified mail a copy of this order and the
27 petition and all attachments thereto on respondent and respondent's attorney, the
28

1 Attorney General of the State of California. The clerk also shall serve a copy of this
2 order on petitioner.

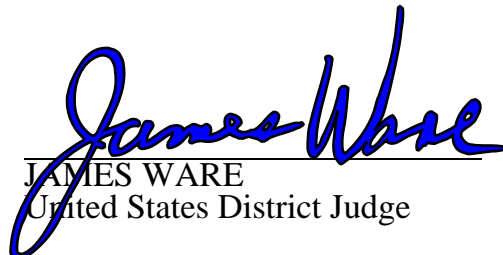
3 2. Respondent shall file with the court and serve on petitioner, within
4 **ninety (90) days** of the issuance of this order, an answer conforming in all respects
5 to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of
6 habeas corpus should not be issued. Respondent shall file with the answer and serve
7 on petitioner a copy of all portions of the state trial record that have been transcribed
8 previously and that are relevant to a determination of the issues presented by the
9 petition.

10 If petitioner wishes to respond to the answer, he shall do so by filing a
11 traverse with the court and serving it on respondent within **forty-five (45) days** of
12 his receipt of the answer.

13 3. Respondent may file a motion to dismiss on procedural grounds in lieu
14 of an answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules
15 Governing Section 2254 Cases. If respondent files such a motion, petitioner shall
16 file with the court and serve on respondent an opposition or statement of non-
17 opposition within **thirty (30) days** of receipt of the motion, and respondent shall file
18 with the court and serve on petitioner a reply within **fifteen (15) days** of receipt of
19 any opposition.

20 4. Petitioner is reminded that all communications with the court must be
21 served on respondent by mailing a true copy of the document to respondent's
22 counsel. Petitioner must also keep the court and all parties informed of any change
23 of address.

24
25 DATED: August 31, 2007


JAMES WARE
United States District Judge